IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3499 of 1999

WITH

SPECIAL CIVIL APPLICATION NO.10274 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BHUPATSINH CHANDRASINH ZALA

Appearance:

MR HARDIK C RAWAL for GSRTC

MR MUKESH RATHOD for Workman

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/02/2000

ORAL JUDGEMENT

1. Of the two matters referred to hereinabove, Special Civil Application No.3499/99 has already been

admitted and is pending final hearing. Special Civil Application No.10274/99 is a cross petition filed by the employee - driver of the respondent - Gujarat State Road Transport Corporation, challenging the very same award as in the earlier petition. This petition is therefore also admitted and rule is directed to be issued. Mr. Hardik Raval, learned counsel waives service of rule for the respondent in Special Civil Application No.10274/99.

2. On a joint request of the learned counsel for the respective parties, these petitions are taken up for final hearing today. These cross petitions challenge the judgement and award passed by the Labour Court in Reference [LCA] No.1632/92.

3. The employee was employed as a driver by employer - Corporation on the relevant day, when the bus he was driving met with an accident with the scooterist, which resulted in the death of the scooterist. It is pertinent to note that although there may be a controversy as to exactly how the accident occurred, there is no controversy which would emerge from the record of the disciplinary proceedings, and no controversy as to the fact that there was an accident, that this accident involved a scooterist and the bus driven by the employee, and that the scooterist died as a result of the accident. Thus, the exact manner in which the accident took place is not relevant except perhaps for the factor of determining contributory negligence. However, even this factor is not of much importance in the context of the present proceedings inasmuch as the specific case of the driver in the domestic inquiry was that the scooterist was intending to turn from left to right, and that it was the scooterist who hit the front left side of the bus, and that it was not the bus which hit the scooterist. Such a defence on part of the driver is implausible for two reasons. Firstly, if the scooterist was intending to take a turn from left to the right and in this process, he hit the front left corner of the bus, the impact would be against the front left corner of the bus, which is not disclosed by the Panchnama. Another factor which suggests that such a defence is an improbable story inasmuch as a scooterist intending to turn right from the left would be a scooterist overtaking a bus from the wrong side i.e. from the left of the bus, if he were to hit the bus on its left front corner. If such was the case, it would have been the easiest thing to put it in this form and to blame the scooterist for the accident for attempting to overtake the bus from the wrong side and simultaneously to take a turn. The absence of such a plain defence would also indicate the improbablility of

the version of the defence.

4. However, this is not the crux of the matter. I therefore do not propose to discuss it any further.

5. As a result of the hearing and the discussion, both the learned counsel for the respective parties have suggested that the punishment imposed by the Tribunal is not justified. One counsel pleads for more stringent punishment and the other counsel pleads for a very lenient punishment. However, ultimately both the learned counsel have left the question of appropriate punishment to the Court.

6. On the facts and circumstances of the case, having perused the impugned judgement and award and having referred to such documentary evidence on record to which my attention has been drawn, I am of the opinion that the punishment which would meet the ends of justice, would be to direct reinstatement of the workman without any backwages, but with continuity of service. It is accordingly so directed.

7. These petitions are accordingly disposed of with no orders as to costs. Rule is discharged.

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